

Testimony of

The Honorable W. Royal Furgeson, Jr.

District Judge for the Western District of Texas
Chairman of the Judicial Conference Committee on Judicial Resources
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Mr. Chairman and members of the Subcommittee, I am Royal Furgeson, District Judge for the Western District of Texas and Chair of the Judicial Conference Committee on Judicial Resources.

That Committee is responsible for all issues of human resource administration in the U.S. courts of appeals and district courts, including the need for Article III judges and support staff. I am here today to provide information about the outstanding judgeship needs of the courts, and the process by which the Judicial Conference of the United States ascertains those needs.

In March 2005, the Director of the Administrative Office of the U.S. Courts transmitted to the President of the Senate and to the Chairmen of the House and Senate Judiciary Committees a draft bill containing the recommendations of the Judicial Conference to create:

- 12 additional judgeships for the U.S. courts of appeals (nine of them permanent, and 3 temporary) and
- 56 additional judgeships for the U.S. district courts (44 of them permanent, and 12 temporary).

For many of these courts, the recommendations reflect needs that have arisen or have become acute since the last comprehensive judgeship bill was enacted, in 1990. The Conference is also recommending that three temporary district court judgeships--created in 1990--be established as permanent positions, and that one temporary district court judgeship be extended for an additional five years.

In developing these recommendations for additional judgeships, the Conference uses a formal, systematic and rigorous process for evaluating judgeship needs in the courts of appeals and district courts. The Judicial Conference conducts a new survey of judgeship needs every two years.

- Each court that requests an additional judgeship submits a detailed justification to my Committee's Subcommittee on Judicial Statistics.
- After review, the Subcommittee sends its preliminary recommendation to the court and to the appropriate circuit judicial council, and solicits views.
- The Subcommittee then reviews the response from the court and the recommendation of the judicial council in the light of updated caseload data, and submits its recommendations to the Committee.

- The recommendations of the Committee on Judicial Resources are in turn provided to the Judicial Conference.
- The judgeships proposed in the draft bill were given final approval by the Conference.

A more detailed description of the process and standards used for the courts of appeals and district courts is included in my prepared statement.

To reduce requests to Congress for additional judgeships, the judiciary has taken steps to maximize use of existing judgeships, including:

- Requests for temporary rather than permanent judgeships, where that suffices;
- The services of senior judges and magistrate judges;
- Inter-circuit and intra-circuit assignment of judges;
- Use of alternative dispute resolution;
- Implementation of new technologies such as video-conferencing;
- Use of conservative formulas to evaluate judgeship requests in the courts of appeals and the district courts, so that we do not ask unless we need; and
- Recommendations that vacancies not be filled in courts with consistently low workload.

As part of the judgeship survey, courts requesting additional judgeships are questioned about their efforts to make use of all available resources.

In 2004, the judiciary adopted new case weights as the basis for calculating weighted filings in the district courts. The previous case weights had been in place since 1993, and there was concern that many of the case weights were out of date due to changes in case law and case management procedures. The Conference used weighted filings per judgeship based on the new case weights to determine whether a court's caseload met the criteria for considering requests for additional judgeships.

Since the last comprehensive judgeship bill was enacted, workload has increased fairly relentlessly:

- No additional circuit judgeship has been created since 1990; yet filings from then to June 2005 in the courts of appeals have grown by 58 percent; the national average caseload per three-judge panel has reached 1,222--the highest ever.
- Since 1990, district court filings rose 40 percent--criminal felony filings rose 75 percent, and civil filings rose 34 percent. Since 1990, 34 additional district judgeships have been created, in response to particular exigencies in particular districts; even so, the average nationwide weighted filings per judgeship stands at 531--well above the Conference standard for considering recommendations for additional judgeships. This overall average is high; the situation is downright alarming in the courts in which judgeships are requested in the draft bill. As of June 2005, all but three of those courts have weighted filings of 500 per judgeship or higher; 10 of these courts have per-judgeship filings exceeding 600.

The Conference recognizes that there cannot be indefinite growth in judgeships. The Long Range Plan for the Federal Courts (in Recommendation 15) emphasizes that growth must be limited to

the number of new judgeships that is necessary to exercise federal court jurisdiction. The Conference has a demonstrated commitment to controlling growth, and has requested far fewer judgeships than the caseload increases would suggest are now required.

On behalf of the Judicial Conference, I request that this Subcommittee give full and favorable consideration to the draft bill submitted by the Judicial Conference. I will be happy to respond to any questions you have.